

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Chapter 11 Case No. 08-13555 (JMP)

4 Case No. 08-01420 (JMP) (SIPA)

5 Adv. Case No. 10-03547 (JMP)

6 - - - - - x

7 In the Matter of:

8 LEHMAN BROTHERS HOLDINGS, INC., ET AL.,

9 Debtors.

10 - - - - - x

11 In the Matter of:

12 LEHMAN BROTHERS INC.,

13 Debtor.

14 - - - - - x

15 LEHMAN BROTHERS SPECIAL FINANCING INC.,

16 Plaintiff,

17 v.

18 BANK OF AMERICA NATIONAL ASSOCIATION, ET AL.,

19 Defendants.

20 - - - - - x

21 U.S. Bankruptcy Court

22 One Bowling Green

23 New York, New York

24 July 18, 2012

25 10:03 AM

1 B E F O R E :  
2 HON JAMES M. PECK  
3 U.S. BANKRUPTCY JUDGE  
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1 Hearing re: Motion of Lehman Brothers Holdings Inc. to  
2 Modify Certain Existing Claims Order [ECF No. 29193]

3  
4 Hearing re: Joint Motion of Lehman Brothers Holdings Inc.  
5 and Litigation Subcommittee of Creditors' Committee to  
6 Extend Stay of Avoidance Actions [ECF No. 29163]

7  
8 Hearing re: Ninth Application for Interim Professional  
9 Compensation for Hughes Hubbard & Reed LLP [ECF No. 5099]

10  
11 Hearing re: Lehman Brothers Special Financing Inc. v. Bank  
12 of America National Association, et al. [Adversary  
13 Proceeding No. 10-03547]  
14 Motion to Amend First Amended Complaint

15  
16 Hearing re: Motion of Fidelity National Title Insurance  
17 Company to Compel Compliance with Requirements of Title  
18 Insurance Policies [ECF No. 11513]

19  
20 Hearing re: Motion of Giants Stadium LLC for Leave to  
21 Conduct Discovery of the Debtors Pursuant to Federal Rule of  
22 Bankruptcy Procedure 2004 [ECF No. 16016]

23  
24 Hearing re: Amended Motion of Ironbridge Homes, LLC, et al.  
25 for Relief from the Automatic Stay [ECF No. 23551]

Hearing re: Belmont Park Investments Pty Ltd, et al. v.  
Lehman Brothers Special Financing Inc. [Adversary Proceeding  
No. 12-01045]

Motion to Stay Adversary Proceeding

Hearing re: Motion of Elliott Management Corporation For an  
Order, Pursuant to 15 U.S.C. §§ 78fff-1(B) and 78fff-2(C) (1)  
and 11 U.S.C. § 105(A), (I) Determining the Method of  
Distribution on Customer Claims and (II) Directing an  
Initial Distribution on Allowed Customer Claims [ECF No.  
5129]

Hearing re: Cardinal Investment Sub I, L.P. and Oak Hill  
Strategic Partners, L.P.'s Motion for Limited Intervention  
in the Contested Matter Concerning the Trustee's  
Determination of Certain Claims of Lehman Brothers Holdings  
Inc. and Certain of Its Affiliates [ECF No. 4634]

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please. Good morning.

3 UNIDENTIFIED SPEAKER: Good morning.

4 MR. FAIL: Good morning, Your Honor, Garrett Fail,  
5 Weil, Gotshal & Manges for Lehman Brothers Holdings, Inc.

6 The first motion on the agenda this morning is a  
7 motion to modify certain existing claims orders. The motion  
8 seeks to modify six orders relating to derivative contracts,  
9 alternative dispute resolution, and settlement of claims  
10 against the debtors that remain operative following the  
11 March 6th effective date of the Lehman Chapter 11 plan.

12 Generally, the modifications are required due to  
13 the changes in the status and the more limited role of the  
14 creditors' committee post-effective date. Specifically, the  
15 relief requested would limit or remove certain notice  
16 requirements, participation and consent rights of -- that  
17 the committee had in connection with the settlement of  
18 derivative contracts, ADRs for affirmative recoveries  
19 related to our derivative contracts, and ADRs for claims  
20 filed against the debtors. The committee would continue to  
21 be involved in affirmative derivative recoveries and related  
22 claims for which the demand exceeds \$15 million.

23 The motion further sought to provide LBHI with the  
24 authority to settle all claims filed against the debtors  
25 without further Court or committee involvement. Following

1 discussions with certain parties, Your Honor, LBHI filed a  
2 revised proposed order last night.

3 As revised, LBHI would have the authority to  
4 settle all claims asserted against the debtors where the  
5 allowed amount is less than \$200 million. Where claims have  
6 been split and traded, the threshold is reduced in a  
7 mathematical pro rata fashion. Additionally, LBHI would be  
8 required to seek Court approval for settlements of certain  
9 types of guarantee claims in certain circumstances where the  
10 settlement amount is greater than \$15 million.

11 LBHI believes the relief requested is beneficial  
12 to creditors and is appropriate in the circumstances of  
13 these cases where the oversight of the debtors has shifted  
14 from the creditors' committee to the plan administrator and  
15 its new board of directors.

16 The motion was uncontested and supported by the  
17 creditors' committee. The changes made in the revised order  
18 last night limit the relief requested and do not expand  
19 LBHI's authority beyond what was originally requested. The  
20 changes are without prejudice to LBHI's right to return to  
21 Court to seek further modifications and authority.

22 At this point, LBHI would request that the Court  
23 grant the motion as amended, unless Your Honor has any  
24 further questions.

25 THE COURT: I'd like to hear from the committee

1 concerning its role in achieving these modifications and its  
2 view that the modifications are, in fact, appropriate under  
3 the present circumstances of the case.

4 MR. FAIL: Thank you, Your Honor.

5 MR. O'DONNEL: Your Honor, Dennis O'Donnell,  
6 Milbank, Tweed, Hadley & McCloy on behalf of the committee.

7 Your Honor, we believe the description Mr. Fail  
8 provided of the more limited role of the committee under the  
9 plan is consistent with the plan.

10 The plan contemplates that the committee will  
11 continue to exist for two sets of purposes: the typical, you  
12 know, billing and -- and fee related issues that will  
13 continue to preoccupy us for months to come and through two  
14 sub-committees, the litigation and derivative sub-committee,  
15 with respect to other matters, all of which are under  
16 discussion or have been discussed with the board as to  
17 exactly what that will mean for the committee. But the  
18 committee will have a significant role with respect to a  
19 number -- a number of different areas going forward.

20 The one before the Court today relates primarily  
21 to its derivative sub-committee role which has been  
22 significant throughout the case. I think the debtors would  
23 acknowledge that we have been a very beneficial force in  
24 helping them accomplish many of the things that are actually  
25 recited in -- in the other motion you'll hear about today.

1 But the committee will continue to have a role in  
2 that respect, but it's been limited to a certain extent to  
3 acknowledge where that role would be most efficiently put to  
4 use, limiting it to mediation, ADR situations where the  
5 demand at issue is more than \$15 million, continuing to give  
6 the committee a consent right under the ADR procedure's  
7 order, and continue to involve the committee in the  
8 briefing, and discussion, and actual mediation process with  
9 respect to both the regular ADRs and SPV ADRs when the  
10 demand is in excess of \$15 million.

11 That is consistent with what we agreed to. We  
12 think it's consistent with the spirit of what the plan  
13 contemplated, and we think that it will allow the committee,  
14 now known as the litigation committee, to continue to  
15 provide substantial benefit to the debtors by making that  
16 process proceed more efficiently and productively for the  
17 debtors.

18 THE COURT: Okay. This is unopposed and is  
19 approved. The changes to a very large extent are designed  
20 to bring the current practice into conformity with the  
21 requirements of a post-confirmation debtor, and as much as  
22 the changes result from a consensual process, this is  
23 approved.

24 MR. FAIL: Thank you, Your Honor.

25 MS. MARCUS: Good morning, Your Honor. Jacqueline

1 Marcus, Weil, Gotshal & Manges on behalf of Lehman Brothers  
2 Holdings Inc., as plan administrator for the debtors.

3 Item number 2 on the agenda is the joint motion of  
4 the plan administrator and the creditors' committee to  
5 extend the stay of avoidance actions and grant certain  
6 related relief.

7 We filed earlier this week the declaration of  
8 Lawrence Brandman, a managing director of LAMCO, LLC in  
9 support of the motion. Mr. Brandman is present in court  
10 this morning.

11 Pursuant to this motion, Your Honor, the debtors  
12 seek an extension of the order staying avoidance actions  
13 which currently expires on July 20, 2012 to  
14 January 20, 2013, or a six month extension. As set forth in  
15 the motion and the reply, the debtors have used the respite  
16 from litigation provided by the stay to conduct settlement  
17 discussions with avoidance action defendants and continue  
18 the ADR process.

19 The Court has noted on several occasions that the  
20 ADR process has been a success. I'm happy to report that  
21 the debtors are continuing to reap benefits from the  
22 existence of the stay. As indicated in the 32nd status  
23 report filed yesterday by Peter Gruenberger, as a result of  
24 mediation, the debtors have achieved settlements in 206 ADR  
25 matters involving 228 counter-parties, generating an excess

1 of \$1.1 billion for the estates. Another measure of the  
2 success is that 75 out of the 79 ADR matters that have  
3 reached the mediation stage have been settled. As indicated  
4 in Mr. Gruenberger's letter, another 7 mediations are  
5 scheduled to commence between today and early November.

6 Most recently, on Monday, the plan administrator  
7 filed a motion for approval of a settlement agreement with  
8 Gemstone CDO IV Ltd, which is a defendant in avoidance  
9 action 3542. If approved, the Gemstone settlement will  
10 result in payment of over \$200 million to the estates.

11 In sum, not only has the ADR process been  
12 successful in the past, the Chapter 11 estates have  
13 continued to be able to manage the process successfully,  
14 thus generating proceeds for ultimate distribution to their  
15 creditors. The debtors seek a further six month extension  
16 of the stay to enable them to continue to build on the  
17 successful ADR process and to resolve pending matters while  
18 minimizing the time and expense expended by the debtors and  
19 the avoidance action defendants, as well as the burden on  
20 the Court that would result if the stay were to expire.

21 As we have stated before, the relief LBHI seeks is  
22 warranted under Section 105 of the Bankruptcy Code due to  
23 the number and complexity of the avoidance actions, the lack  
24 of prejudice to any of the avoidance action defendants, and  
25 the progress achieved to date. The proposed extension would

1 affect several hundred parties, yet the liquidators of LB  
2 Australia and U.S. Bank have filed the only objections to  
3 the motion.

4 I'll address the LB Australia objection first,  
5 Your Honor.

6 As the Court is well aware, LB Australia is  
7 neither an avoidance action defendant nor a creditor in  
8 these cases. As noted in our reply, as well in the replies  
9 we have filed in response to previous objections, LB  
10 Australia is not a party in interest in these cases and  
11 therefore is not even entitled to be heard with respect to  
12 the stay. I refer Your Honor, again, to the Second  
13 Circuit's decision in Revco and Judge Chapman's decision in  
14 Keepers as support for the proposition that LB Australia  
15 lacks standing.

16 Indeed, LB Australia's objection this time doesn't  
17 even contest the standing issue. Instead, in paragraph 4 of  
18 its objection, LB Australia reserved its right to move to  
19 lift the stay if it is ultimately successful in its quest to  
20 intervene in adversary proceeding 3545.

21 LB Australia's sole objection to the current  
22 motion is its contention that "the debtors have not met  
23 their burden of demonstrating substantial progress in the  
24 ADR process with respect to the Dante series in which LBA  
25 has an interest." That comes from their amended objection

1 in paragraph 7.

2 As an initial matter, Your Honor, it bears noting  
3 that the SPV ADR procedures provide a mechanism pursuant to  
4 which LB Australia may get more information about the status  
5 of the ADR proceedings involving transactions in which it is  
6 a noteholder. All it has to do is enter into a -- an  
7 appropriate confidentiality agreement. We believe it hasn't  
8 done that yet.

9 More importantly, however, in deciding whether to  
10 extend the stay, the Court should consider more than simply  
11 the parochial interest of one objector because the Court's  
12 decision will have broad ramifications.

13 Expiration of the stay would cause real prejudice  
14 in time and money to the actual defendants in adversary  
15 proceeding 3545, as well as the avoidance actions -- the  
16 other avoidance actions, who would be forced to start  
17 spending real litigation dollars if the stay were lifted.

18 Expiration of the stay will also prejudice the  
19 debtors because they will not be able to spend their full  
20 energy on the settlement and ADR process. In addition,  
21 resumption of full-scale litigation will be costly.

22 At the conclusion of the January 11th hearing  
23 regarding the debtors' prior motion for extension of the  
24 stay, the Court noted at page 43 of the transcript that  
25 litigation was likely to take many years and suggested that



1 the quicker route to resolution of the flip clause dispute  
2 might be a negotiated settlement.

3 Indeed, the debtors and LB Australia currently are  
4 engaged in active dialogue and there are plans under way to  
5 set up a meeting among the debtors, LB Australia, and the  
6 Belmont noteholders perhaps as early as later this month.  
7 That discussion and initiative, Your Honor, reflects the  
8 benefits that are derived from this stay and flatly  
9 contradicts any suggestion that the extension of the stay is  
10 slowing the resolution of the pending matters. On the  
11 contrary, the plan administrator submits that the existence  
12 of the stay has been a critical component of the success  
13 realized to date.

14 U.S. Bank's objection states that "in large part,  
15 the trustee is not opposed to the continuation of the stay."  
16 And like LB Australia, U.S. Bank concedes that it, too, has  
17 been working with the debtors and actively involved in the  
18 ADR process.

19 U.S. Bank's objection is -- excuse me, is that it  
20 contends that the debtors are using the continuation of the  
21 stay to make, what they call, outrageous claims for interest  
22 on termination payments that U.S. -- that SPV's may  
23 ultimately owe to the debtors. Yet the U.S. Bank objection  
24 itself makes it clear that the debtors' request for interest  
25 on the termination payment, based on their cost of funds, is

1 specifically provided for in the ISDA master agreement.

2 Thus, in requesting that the Court set a different  
3 interest rate, or order that interest shall cease to accrue,  
4 U.S. Bank essentially is asking the Court to re-write the  
5 ISDA master agreement. There's no authority for the Court  
6 to do that, particularly in the context of the debtor's  
7 motion.

8 As we note in our reply, U.S. Bank will have ample  
9 opportunity to argue about the applicable interest rate and  
10 the period of time during which interest should accrue if  
11 these matters ultimately wind up in litigation.

12 U.S. Bank's request is particularly brazen given  
13 that this Court has already determined on two occasions, in  
14 the BNY adversary proceeding and the Ballyrock adversary  
15 proceeding, that the flip clause is an unenforceable ipso  
16 facto clause, and therefore the SPV counter-parties do,  
17 indeed, owe termination payments to the debtors. U.S. Bank  
18 can minimize the interest expense if it directs the SPV  
19 counter-parties to take action that is consistent with the  
20 Court's prior ruling and pay the debtors the contested  
21 termination payments.

22 The debtors are prepared to insure that the funds  
23 will be available to be repaid to the SPV's, if it  
24 ultimately turns out that the debtors do not prevail in the  
25 litigation. Moreover, U.S. Bank's objection, like prior

1 objections articulated earlier by LB Australia, is based on  
2 the flawed premise that was rejected by the Court in January  
3 that the disputes will be resolved more quickly in  
4 litigation than they will be resolved through ADR or  
5 negotiation. In addition, U.S. Bank ignores the substantial  
6 cost associated with litigation.

7 In short, U.S. Bank has not demonstrated any  
8 prejudice that cannot be addressed and in any event has  
9 failed to prove that any prejudice to the SPV counter-  
10 parties resulting from extension of the stay will outweigh  
11 the prejudice to the Chapter 11 estates and all of the other  
12 avoidance action defendants, if the stay expires on  
13 July 20th.

14 In conclusion, Your Honor, the issues raised in  
15 the objection are insignificant in comparison to the success  
16 of the debtors' efforts to resolve the avoidance actions,  
17 the potential for continued success, and the prejudice to  
18 the debtors and their estates and all the other avoidance  
19 action defendants that would result from a full-scale  
20 resumption of litigation.

21 As a result, the debtors request that the  
22 objections be overruled and the Court extend the stay for an  
23 additional six months. I'm happy to answer any questions  
24 you might have.

25 THE COURT: I have a question that doesn't

1 directly relate to your argument or the issues that are  
2 presented by the objectors, but it has to do with how long  
3 this goes on. We've been extending the stay for six month  
4 intervals. Each time we do it, it adds up: six months, a  
5 year, a year and a half, two years. Is it possible for you  
6 to provide some guidance as to the likely duration of this  
7 process and when it comes to an end and we unleash the dogs  
8 of war?

9 MS. MARCUS: That's a tall order, Your Honor. Let  
10 me speak to the non-derivative matters first. As you know,  
11 the debtors entered into tolling agreements with numerous  
12 potential avoidance action defendants and also commenced  
13 some, what I'll call more routine preference actions. The  
14 process with respect to those is that we have been making  
15 great progress analyzing, exchanging information,  
16 documentation with the counter-parties. We're engaged in  
17 settlement discussions with some. We have dismissed out  
18 others. So that process I think will end soon. I know the  
19 creditors' committee has the LMA preference action, so I  
20 guess Mr. O'Donnell can speak to that.

21 As to the derivative matters, I'm a little bit  
22 hard pressed to estimate how much longer it will be. We are  
23 making substantial progress and we are dismissing out  
24 defendants from those actions. There will be a point at  
25 which Mr. Gruenberger's monthly letters will show or won't

1 show continued progress. I -- I can ask Mr. Slack or  
2 Mr. Brandman if they have any -- I don't -- I think anything  
3 I say would be really pure speculation.

4 THE COURT: I don't want speculation, but I'm also  
5 interested in knowing if I can anticipate that six months  
6 from now I'm going to be getting another request for a six  
7 month extension, and if a year from now I'm going to be  
8 getting another request for a six month extension. I'm  
9 trying to get some sense because a blanket stay on  
10 litigation needs to come to an end at some point.

11 MS. MARCUS: I understand that, Your Honor. I --  
12 my best guess is that you will be getting another request in  
13 six months, however, the universe of actions that will be  
14 subject to that next request will be shrinking. But I don't  
15 -- I think it would be incredibly ambitious to expect that  
16 we'd be done with the stay in six months.

17 THE COURT: Mr. Slack, do you have anything to add  
18 on -- on this speculative endeavor that we've now embarked  
19 on?

20 MR. SLACK: I think Ms. Marcus is right that we  
21 have now put into ADR the vast majority of -- of what needs  
22 to be put in.

23 With respect to the SPV ADR's, as Your Honor  
24 knows, we've -- that process actually takes awhile because  
25 we build in, for example an initial 90 days because when you

1 bring a -- a counter-party into ADR, that counter-party  
2 needs the ability, and we've given the ability to go out and  
3 talk to the noteholders. So, the -- the process for the SPV  
4 ADRs is -- is extended and I would expect that we'd -- we  
5 would have at least one more six month period.

6 I would -- I would suggest that we'd have to go  
7 back and discuss it, but, you know, I do think that in the  
8 six month period that we have coming, we're going to have a  
9 much better idea of -- of what is left after the next six  
10 months, and we could give you an interim report if -- if  
11 that's what you would like, we could send something to you  
12 that -- that gives you an interim report during these six  
13 months.

14 THE COURT: I'm not sure what that report would  
15 consist of or how I would be benefited by having it other  
16 than having some more information and greater visibility  
17 into the process, in that sense it might be useful, but I'm  
18 also sensitive to the addition of work that's entirely extra  
19 and costs some money, so we can revisit that. We don't have  
20 to decide that now.

21 MR. O'DONNELL: Your Honor, Dennis O'Donnell on  
22 behalf of the committee.

23 In terms of the subset of the avoidance actions of  
24 the committee has now in charge -- been in charge to put --  
25 prosecute the (indiscernible 00:18:58) actions. That's a

1 relatively small universe, and our primary interest there is  
2 pursuing settlements, as well. There have been discussions,  
3 there are ongoing discussions.

4 I -- I can't -- I also can't tell you that six  
5 months from now we won't also need an extension, but since  
6 it is a small universe, we should be able to give you a  
7 better sense before that six months expires as to how long  
8 that we think we need to continue this settlement process  
9 before litigation starts.

10 THE COURT: Okay.

11 MR. GETTLEMAN: Good morning, Your Honor. Jeffrey  
12 Gettleman representing the liquidators of Lehman Brothers  
13 Australia.

14 Your Honor, I just have a brief and I hope helpful  
15 comment.

16 THE COURT: You withdraw your objection?

17 MR. GETTLEMAN: Well, we didn't actually call it  
18 an objection --

19 THE COURT: Well, that's real wise.

20 MR. GETTLEMAN: -- we were making an observation,  
21 Your Honor.

22 THE COURT: It was -- it was an objection by a  
23 party that acknowledges it lacks standing.

24 MR. GETTLEMAN: Exactly. So, as Your Honor knows,  
25 the liquidators of Lehman Brothers Australia have a

1 particular interest in resolving their estate. And the only  
2 way that they can resolve their estate is if the Dante note  
3 program is -- is resolved consensually or in some other way.

4 And so there's three ways that we can approach  
5 that.

6 One is through litigation and, you know, we agree  
7 with Your Honor's observation at the last hearing that any  
8 such litigation, whatever the Second Circuit does is going  
9 to take a long time, so whatever happens there, will happen.

10 The second way is through informal discussions  
11 with the debtors. And as the debtors' counsel has  
12 mentioned, there have been discussions. The last  
13 information I have from my client -- clients is that they'll  
14 be back in New York sometime probably within the next month  
15 to continue those discussions, and hopefully we'll make  
16 progress there.

17 The third, and this is what I really wanted to  
18 focus on today, is the ADR process.

19 So, what's happened so far, as we understand and I  
20 believe this was in the debtors' reply, the debtors have  
21 served the issuer. I actually don't know if they've served  
22 the trustee, but what's happened as far as our end was that  
23 we -- the litigators, sorry -- the liquidators have received  
24 two communications from the trustee. One was in May and one  
25 was just a few weeks ago, beginning of July. And basically



1 all they say is that we've been served, the trustee is  
2 taking the position that they don't have authority to act,  
3 and the issuer, who apparently was also served, hasn't yet  
4 decided what position they're going to take. So, that's  
5 been after three months. So, clearly the ADR process isn't  
6 moving along at a rapid pace.

7 So, in any event, trying to be helpful here, Your  
8 Honor, we do have a suggestion and that is we -- we might  
9 respectfully suggest that the debtors utilize their  
10 discretion and serve the LBA liquidators with the ADR  
11 process. It seems to me that there are a couple of benefits  
12 to that, in other words, making the liquidators a party to  
13 the ADR.

14 I mean, first of all, the liquidators are economic  
15 stakeholders, as opposed to the trustee or the issuers.  
16 Second thing is the liquidators, you know, clearly will move  
17 more quickly in the ADR process than the parties that are  
18 currently -- have currently been served. The third thing  
19 is, and this is not -- certainly not a promise, but I can  
20 tell Your Honor that, as I think we've probably said before,  
21 the liquidators have been dealing with quite a few of these  
22 noteholders because the noteholders have claims against the  
23 Lehman Brothers Australia estate in Australia.

24 So, it is possible that the noteholders might even  
25 agree to appoint the liquidators to negotiate on their

1       behalf. It's possible, I can't say whether it's going to  
2       happen or not. So, that's really all I have to say, Your  
3       Honor. Obviously, it is a discretionary act on the part of  
4       the debtors whether to make Lehman Brothers Australia a  
5       party to this, but I think it would help expedite it and  
6       that would be helpful from our perspective, and I would  
7       imagine the debtors' also.

8               THE COURT: You haven't really said anything about  
9       the stay of the litigation, however. What you're really  
10      saying, if I'm understanding you correctly, is that you  
11      recognize that your client does not have standing and issues  
12      surrounding your possible intervention in the pending  
13      adversary proceeding are before this Circuit and unresolved  
14      at this moment.

15             And so, you're standing as a representative of  
16      your client and as a purported friend of the Court to make a  
17      proposal, which you could just have easily have made on the  
18      telephone, or in an email, or in a letter to Lehman. We  
19      don't -- we don't need the gathering of this many people in  
20      a room and a recorded record to carry that -- that message  
21      to Lehman, nor am I going to be directing that they act in  
22      any particular way.

23             So, is this more theater than anything else, or is  
24      this simply a convenient opportunity for you to save a  
25      postage stamp?

1 MR. GETTLEMAN: Well, no, Your Honor. I think the  
2 reason we're here, I mean actually in truth is to be  
3 helpful. I mean it -- it's actually a suggestion that --  
4 that the client and I just recently developed as a possible  
5 way forward in terms of making the ADR proceed more  
6 expeditiously.

7 THE COURT: Okay, but in reference to the actual  
8 matter which is pending before the Court this morning, which  
9 is the motion to extend the litigation stay for another six  
10 months, you're not really arguing against that?

11 MR. GETTLEMAN: No, Your Honor, I mean, as -- as  
12 happened the last time we were before you in January, I mean  
13 Your Honor overruled our objection on the basis of lack of  
14 standing, it didn't seem to me to make sense to continue to  
15 beat that dead horse, so the -- the second thing that Your  
16 Honor suggested is that the best way to resolve this would  
17 be discussion. So -- so, informally and hopefully formally,  
18 we're trying to proceed as quickly as we can.

19 THE COURT: Okay, and -- and I think that's  
20 something that the debtors will either accept or reject  
21 based upon their view of how the ADR is progressing and the  
22 parties who may be useful to -- to be actively engaged  
23 therein.

24 The fact that you have clients who are coming to  
25 the United States for meetings in the near term suggests

1 that this is an active and ongoing process.

2 I do have a question for you, though. Neither  
3 your papers nor your comments this morning reveal anything  
4 as to how things are actually moving forward, if at all, in  
5 the Australian judicial proceeding, and I'm just interested  
6 as a matter of you're providing me with an update, if there  
7 are any events that have transpired in Australia that would  
8 be relevant to this question.

9 MR. GETTLEMAN: Your Honor, the, I guess you would  
10 call it, procedural status in Australia is the -- my  
11 understanding is the liquidators are attempting to move  
12 forward with a scheme of arrangements in order to wrap up  
13 their estate. So, as I said before, one of the matters that  
14 would have to be resolved before that scheme could be  
15 implemented would be the resolution of the Dante program.

16 The second thing, Your Honor, would be another  
17 matter which is the reason we filed our Chapter 15 petition,  
18 which is not quite ready to come back before you again but  
19 will be, hopefully, within the next 30 to 60 days.

20 So, once those matters are resolved, then I  
21 believe the liquidators can move forward with their scheme  
22 of arrangement.

23 THE COURT: Okay. So, maybe I'll know more in 30  
24 to 60 days.

25 MR. GETTLEMAN: Yes, Your Honor.

1 THE COURT: All right, fine. Thank you.

2 MR. GETTLEMAN: Thank you, Your Honor.

3 MR. PRICE: Good morning, Your Honor. Craig Price  
4 from Chapman and Cutler on behalf of U.S. Bank National  
5 Association, as trustee.

6 As we mentioned in our papers, we are not  
7 necessarily opposed to the continuation of the stay and  
8 we've been working with the debtors to resolve the issues in  
9 dispute. However, the trustee asserts in its objection,  
10 because we believe the debtors' attempting to impermissibly  
11 use the stay to adversely affect the rights of the holders  
12 by making claims, outrageous claims, for interest with  
13 respect to the certain termination payments.

14 We -- the debtors would like to assert that we're  
15 trying to redraft these contracts. We're not. The -- the  
16 ISDA master agreement provisions which we cite in our  
17 objection are ambiguous as to what the exact rate of  
18 interest that should be charged with regard to these  
19 termination payments. That --

20 THE COURT: But you seem to be seeking, as a  
21 procedural matter, some kind of advisory opinion or  
22 affirmative order of the Court in reference to interest that  
23 is permissibly to be claimed under these ISDA agreements and  
24 I -- I have a question as to how you even pass the straight  
25 face test for a pleading that says that when you haven't

1 brought any motions seeking a determination of the claim  
2 that you've made or any declaratory judgment action that  
3 might seek to determine that question. And I don't  
4 understand why that question, even if it were procedurally  
5 right, is relevant to the issue which I need to consider  
6 today, namely the extension of the stay, that in substance  
7 you don't oppose anyway.

8 MR. PRICE: Well, a couple things. One, we can't  
9 bring a motion or -- or raise this in litigation because of  
10 the stay, we can't raise these issues.

11 THE COURT: So you're using --

12 MR. PRICE: No, but I'm -- no, because--

13 THE COURT: -- by your own acknowledgement, a  
14 procedural device that is available to you, namely a chance  
15 to file an objection and then cram other inappropriate  
16 matter into the objection?

17 MR. PRICE: No, I don't think that's the case.  
18 What I think is, is that the standard here is, is there any  
19 prejudice to the -- the various holders, and there is. The  
20 prejudice is that they're -- they're seeking this outrageous  
21 interest, which is accruing the entire time the stay is in  
22 place. And so, it goes directly to that --

23 THE COURT: I don't understand the -- the claim of  
24 prejudice at all. Is it -- is it your position that because  
25 there is a legal position being asserted by Lehman that you

1 disagree with that hasn't yet been finally resolved and that  
2 relates to some documents that you consider to be ambiguous,  
3 that the fact that there is an ongoing process in which  
4 these claims continue to be pursued prejudices your clients  
5 because the claims are being made?

6 MR. PRICE: I do think it --

7 THE COURT: Simply because the claims exist?

8 MR. PRICE: Well, the claims -- they exist and  
9 we're not being -- we're not allowed to litigate those  
10 claims because of the stay. The debtors are the ones  
11 seeking to extend the stay. We --

12 THE COURT: Can't you resolve the question in the  
13 manner suggested by debtors' counsel which would be to  
14 provisionally close out these accounts and litigate later,  
15 or settle these accounts and not litigate ever?

16 MR. PRICE: Well, we're the trustee so we don't  
17 have an economic interest in -- in the actual underlying  
18 transactions, so -- we can't sell -- there's nothing for us  
19 to sell --

20 THE COURT: So if there are parties that you  
21 purport to represent here that have economics at stake that  
22 they're concerned about, can they do something about it?

23 MR. PRICE: I imagine they can do something, but  
24 we're the trustee and we're directed to take, you know --  
25 take positions that the holders have directed us to do.

1 THE COURT: I -- you have to speak up, I can  
2 barely hear you.

3 MR. PRICE: Oh, I'm sorry. I'm sorry. No, I'm  
4 just saying as the trustee, we have no economic interests in  
5 these transactions. We can't sell anything and we're  
6 directed to take whatever action we are -- that we take,  
7 or --

8 THE COURT: Were -- were you directed to file  
9 these papers?

10 MR. PRICE: No, but we have certainly gotten push  
11 back from the holders who've been -- who've been complaining  
12 about the fact that these interests -- the claims for  
13 interest have made it difficult to settle some of these  
14 actions.

15 THE COURT: But isn't that inherent in the ISDA  
16 agreement itself?

17 MR. PRICE: The -- what, the ambiguity that exists  
18 in the --

19 THE COURT: No, the fact that there is --

20 MR. PRICE: Well, there's --

21 THE COURT: -- when you close out, you're going to  
22 have to pay something.

23 MR. PRICE: Right, well, you may have to pay  
24 something, but we -- that hasn't been determined yet, and we  
25 haven't been able to bring these claims because of the stay.



1 We haven't been able to either, you know, have our day in  
2 Court because the stay is in place.

3 THE COURT: But don't you have your day, or at  
4 least don't you potentially have your day in ADR?

5 MR. PRICE: We do.

6 THE COURT: So, why isn't --

7 MR. PRICE: We do, and we've been --

8 THE COURT: -- why isn't that --

9 MR. PRICE: -- participating in that process.

10 THE COURT: -- why isn't that the absolute best  
11 means to bring us to some sort of resolution?

12 MR. PRICE: I think it, you know, certainly it's a  
13 process by which we can. But we believe that they've been  
14 using the stay as both a shield and a sword in that to the  
15 extent that we don't agree with -- with what their claims  
16 are in the ADR process, interest is accruing every day at  
17 incredibly high rates, and you know, we're just asking the  
18 Court to balance the harm that -- that's -- that would  
19 accrue to the holders versus the benefits of the -- of the  
20 stay.

21 And we just -- the debtors have claimed that  
22 there's no harm, and -- and perhaps the Court believes  
23 there's no harm as well. We do think that there's been harm  
24 to the various holders because -- because of these claims.  
25 And that's, you know, that's our argument.

1 THE COURT: Okay, and let me just carry forward  
2 your argument a little bit further. If the stay were not to  
3 be extended, tell me how your clients are benefited, or tell  
4 me how your clients are not prejudiced at that point.

5 MR. PRICE: Right, well, they're not prejudiced, I  
6 mean, they would then be able to proceed with -- with  
7 discovery, with the entire process.

8 As you've noted, the debtors -- potentially this  
9 is another year, two more requests for a continuation of the  
10 stay. During that entire time, interest will be accruing.  
11 If we don't settle these matters, then we'll be in a  
12 position where interest is -- is enormous, and we think that  
13 to the extent the stay was lifted, we could start the  
14 process, which may not start for an entire year from now.

15 THE COURT: Well, interest is, to use your  
16 terminology, enormous only if there's either an  
17 acknowledgement that that's the right interest rate to  
18 accrue, or there's a judicial determination following active  
19 litigation that it's the right rate to accrue.

20 MR. PRICE: Right.

21 THE COURT: So there's no actual harm here at all,  
22 no matter how you slice it, it's just a position being  
23 asserted by Lehman, and you're disagreeing with it, but you  
24 can either accept it or reject it. But if you reject it,  
25 it's a matter of time until it's determined what the right

1 rate is.

2 MR. PRICE: But -- I agree with that, completely,  
3 except for the fact that we're engaging in this ADR process  
4 now. We'd like to, you know, try to settle some of these  
5 things, and as long as these claims are being --

6 THE COURT: I think you should.

7 MR. PRICE: Well, that's -- I mean, ultimately  
8 it's the decision of the holders whether to -- whether to  
9 settle or not, but, you know --

10 THE COURT: I'm using the you in that broad and  
11 conversational sense that means that you're the person who's  
12 speaking on their behalf right now. So, in effect, those  
13 represented by U.S. Bank, presumably, can take action to  
14 protect their own economics here, if they do, fine; if they  
15 don't, they take the consequences.

16 MR. PRICE: Right. I mean, that -- that's  
17 certainly true, it's just that to the extent that they lose,  
18 the interest would have accrued much more, let's say, in a  
19 year or six months from now.

20 THE COURT: Well, I guess that's life in high  
21 stakes litigation. I'm unsympathetic to your argument.

22 MR. PRICE: Okay. Like -- like I said at the  
23 beginning --

24 THE COURT: As you fully expected.

25 MR. PRICE: -- we're not necessarily opposed to

1 the continuation of the stay, this is a particular issue  
2 that's come up and that, you know, we -- we believe our  
3 clients were -- you know, that the holders are being  
4 prejudiced to the extent, you know, there certainly are  
5 benefits to the stay being extended, we're not going to deny  
6 that. I think -- but, you know, this was a harm that --  
7 that we saw and we think that the -- the standard is that  
8 the Court balances both the harms against the benefits.

9 THE COURT: Okay. Well, based upon the arguments  
10 that have been presented, the motion to extend the stay on  
11 the avoidance actions for six months appears to be, in  
12 substance, unopposed, notwithstanding the fact that papers  
13 have been filed both by Lehman Brothers Australia and U.S.  
14 Bank, as trustee, because counsel, for all practical  
15 purposes, have each acknowledged that the stay is  
16 beneficial.

17 In the case of Lehman Brothers Australia, there is  
18 an acknowledgment that ADR is currently underway, that there  
19 are hopes that the ADR process will be productive, and even  
20 requests that the liquidators be made a party to the ADR  
21 process so as to, perhaps, expedite a favorable resolution  
22 of the ADR process. As to that suggestion, the Court takes  
23 no position at all, but if it develops that there is some  
24 involvement on the part of the liquidators, I certainly  
25 don't object if Lehman otherwise views that as useful and

1 consistent with the procedures.

2 U.S. Bank seems to be making a substantive request  
3 in the guise of an objection to the extension of the stay  
4 that is not being seriously pressed in any event. What  
5 happens with interest is a matter to be decided at some  
6 point in the future, either on a case by case basis as a  
7 result of negotiated compromises that are not presently  
8 before the Court, or as a result of litigation that may one  
9 day determine the appropriate rate of interest to apply to  
10 these potential recoveries. If a party in interest affected  
11 by the accrual of interest wishes to take action, they are  
12 certainly free to do so. The stay does not in any way get  
13 in the way of people acting in their own self-interest.

14 The joint motion to extend the stay, as a result  
15 of all this, is granted. And I will enter the order.

16 MS. MARCUS: Thank you, Your Honor. We'll submit  
17 an order at the conclusion of the hearing.

18 I think the next matter on the agenda is the -- in  
19 the SIPA proceeding.

20 MR. KOBAK: Good morning, Your Honor. James  
21 Kobak, Hughes Hubbard & Reed, on behalf of the SIPA trustee.

22 The one matter that's going forward on our  
23 calendar today is our unopposed application, that's our  
24 ninth interim application for fees. There's no opposition  
25 to this motion.

1           SIPC, whose recommendation is entitled to  
2       considerable reliance as Your Honor knows, has filed a  
3       recommendation in support of it. The application covers the  
4       four month period July through October of 2011. The total  
5       of time is somewhere in excess of 50,000 hours, which  
6       includes 400 hours of the trustee, himself.

7           As we customarily do, we've applied our 10% public  
8       interest discount to the fees, which in the case amounts to  
9       approximately \$2.5 million. We've also voluntarily written  
10      off, either voluntarily or as a result of discussions with  
11      SIPC, approximately \$350,000 in fees and \$80,000 in expenses  
12      customarily charged to other clients.

13          I think that our papers and my affidavit explain  
14      the services that were rendered during that period. And, as  
15      I say, the application is unopposed, so unless Your Honor  
16      has any questions, we'd ask you to approve the application.

17          THE COURT: I have no questions, I approve the  
18      application and I am influenced by the papers filed in  
19      support of the application by SIPC.

20          MR. KOBAK: Thank you, Your Honor. And I believe  
21      that concludes our calendar for today, and if possible, if  
22      we could be excused, we would appreciate it.

23          THE COURT: Everybody who is involved in the fee  
24      application process in the LBI case is excused --

25          MR. KOBAK: Thank you.

1 THE COURT: -- but you're certainly -- you're  
2 certainly welcome to stay if you wish.

3 MR. KOBAK: Thank you, Your Honor.

4 MS. MARCUS: Your Honor, the next matter is the  
5 adversary proceeding docket. We've actually put that to the  
6 morning calendar because it was a short calendar and  
7 Mr. Dahill will be handling that for the debtors.

8 MR. DAHILL: Good morning, Your Honor. William  
9 Dahill from Wollmuth Maher & Deutsch, on behalf of Lehman  
10 Brothers Special Finance.

11 This is in the avoidance action, adversary  
12 proceeding 10-03547. This is the distributed deals  
13 avoidance action, the flip clause case in which the monies  
14 have actually been distributed as opposed to numerous other  
15 ones, which are being handled in separate adversary  
16 proceedings.

17 The application before the Court today is to grant  
18 the motion to amend the first amended complaint. This  
19 request and the motion before the Court is a culmination of  
20 a series of orders following the filing of the action in  
21 September of 2010. The orders issued thereafter permitted  
22 LBSF to engage in wide-ranging discovery to identify and  
23 confirm the identity of noteholders, during which there was  
24 also an extension of the time period to serve pleadings and,  
25 of course, the stay which was in effect broadly across the

1 cases was, in effect, in the distributed deals case as well.

2 Significant efforts were undertaken through the  
3 discovery permitted to identify new noteholders and thus to  
4 permit amendment, which brings us here.

5 Through the process, LBSF has identified 165 new  
6 defendant noteholders, has been able to correct the  
7 identification of 33 additional defendant noteholders, and  
8 through this application seek to amend the complaint to add  
9 all of those parties to the adversary proceeding, as well as  
10 to add claims under Section 548(A)(1)(a) of the Bankruptcy  
11 Code and for replevin as against all parties existing and  
12 those being added.

13 Prior to the deadline for objections, 37 parties  
14 reached out to us and entered into stipulations in which  
15 they agreed that they would not contest this application,  
16 preserving whatever substantive rights they had to such time  
17 in the future as may be appropriate.

18 There were a total of ten objections that were  
19 filed on July 11th, six of them styled as limited objections  
20 in which the filing parties consented to or agreed to the  
21 amendment of the complaint subject to their reserving their  
22 rights to contest later the substantive issues raised by the  
23 amended pleading, and there were four what I'll call  
24 substantive objections, as well.

25 Of those total of ten objections, we reached



1 agreement with nine of the ten, which in essence have all of  
2 which have been resolved primarily through the submission of  
3 a revised order, which we did on Monday, docket number 294,  
4 which some of the other parties also had stipulations that  
5 they entered into in addition to agreeing to this new order.

6 The net impact of this is that all of the parties  
7 have either not objected, or have stipulated, or reached  
8 agreement with respect to the amendment of the complaint,  
9 except for one of the objections filed by a party known as  
10 Dispatch of Ohio.

11 The substantive argument on their objection has  
12 been set for August 15th at 2:00 p.m. But what we put  
13 before the Court today, given that every other party has  
14 agreed or has consented to the amendment of the complaint,  
15 is an order which grants the relief that LBF seeks -- LBSF  
16 seeks. It preserves the defenses that all those parties  
17 have to such point in the future that may come to that time  
18 period at the expiration of a stay or otherwise, should  
19 there still be -- should they still be in the case, and sets  
20 August 15th as the date for the argument on the one  
21 substantive objection.

22 Last evening, we received an objection from  
23 Dispatch to our revised order asserting, I believe,  
24 something to the effect that they thought that in some way  
25 they were losing rights by proceeding with regard to their

1 objection as opposed to the parties that are waiting to  
2 assert their objections later.

3 The order as presented to the Court does not  
4 eliminate any rights they may have, what it does is set  
5 forth whatever rights they may have will be determined in  
6 connection with the hearing on August 15th. To the extent  
7 that there are rulings that arise out of -- as a result of  
8 that objection being heard, they may impact whatever rights  
9 either party may have going forward to some point in the  
10 future.

11 And our order, as submitted, intends to do nothing  
12 different, what we understand that the request by Dispatch  
13 with -- again, not on their objection to the underlying  
14 application which will be heard in August, but their  
15 objection to the order that's now before the Court seems to  
16 be that they want all of their rights preserved,  
17 irrespective of what occurs at -- at a hearing in August.  
18 And we believe that's giving them two bites at the apple.

19 So, we respectfully request that the order, as  
20 presented to the Court, which will enter the order granting  
21 the amendment of the pleading to essentially the 300 parties  
22 who are not contesting in any way this application and  
23 preserves Dispatch's rights to deal with their objection on  
24 August 15th.

25 If you have any questions, Your Honor, I'm happy

1 to address them.

2 THE COURT: No, I'll hear from Dispatch.

3 MR. KAUFMAN: Good morning, Your Honor. Alan  
4 Kaufman, McKenna Long & Aldridge, on behalf of Dispatch.

5 As Mr. Dahill is well aware, we're not intending  
6 to get two bites at the apple. We're not suggesting that  
7 irrespective of what occurs on -- with respect to the motion  
8 to amend that we would then -- that that order would then be  
9 cast aside and we would get to re-argue it in the motion to  
10 dismiss.

11 THE COURT: I saw your papers. I don't understand  
12 your position at all.

13 MR. KAUFMAN: Well, Your Honor, the -- I think the  
14 -- the intent -- there is an agreement of the intent between  
15 the parties, but I think there's a little bit of a dispute  
16 as to presentation. Essentially, if Your Honor has the  
17 proposed order in front of him --

18 THE COURT: I don't.

19 MR. KAUFMAN: Okay. The -- on page 3 it says, if  
20 you don't mind me reading very briefly, "order that the  
21 entry of this order. Notwithstanding any other provision in  
22 this order, all of the rights, defenses, claims, and  
23 counter-claims of each defendant, including -- (including  
24 those named as defendants for the first time through the  
25 amended complaint, but not -- but excluding Dispatch) to the

1 relief sought in the second amended complaint are expressly  
2 preserved and may be asserted as appropriate through a  
3 motion or responsive pleading after the second amended  
4 complaint has been dually filed and served." You know, so  
5 forth and so on.

6 And it's really three words. I mean this proposed  
7 order is supposed to do two things, and I think both parties  
8 agree what it's supposed to do, I just think there's dispute  
9 as to whether -- what it actually does do.

10 It's supposed to preserve the rights, I guess, of  
11 the parties who have objected, but are not pursuing the  
12 motion to amend right now, or not objecting to the motion to  
13 amend. And as to Dispatch, which intends to proceed with  
14 its -- with this objection, it's simply adjourning the  
15 return date. That's really all this is supposed to do, and  
16 I think both sides agree with that.

17 I think what Dispatch has a problem with is it  
18 says, but excluding Dispatch. In other words, what it's  
19 saying is, all rights are preserved, but excluding Dispatch.  
20 And I think because of those three words, but excluding  
21 Dispatch, there's a concern that perhaps those rights are  
22 not being preserved then. Obviously, what's the point of  
23 saying, but excluding Dispatch?

24 THE COURT: Well, I think what it's saying is  
25 that, it may not be saying it artfully, is that this order

1 applies to parties that have either agreed or have withdrawn  
2 their objections, but Dispatch is not affected by that  
3 aspect of the order.

4 You may or may not be affected by that aspect of  
5 the order in the future because I have no idea what your  
6 objections are, or why we're dealing with you as opposed --  
7 as the sole remaining objector. But you take the  
8 consequences of being that sole remaining objector, and you  
9 may end up in a worse position as a result of what happens  
10 on August 15th. You should know that. You may end up in a  
11 worse position.

12 So while it's not two bites at the apple, you have  
13 an opportunity now, should you choose to -- to be like  
14 everybody else, or to be separate. So, you're separate.  
15 Take the consequences of being separate.

16 MR. KAUFMAN: Understood, Your Honor. The -- the  
17 point though is that we -- our rights should be preserved  
18 just like anyone else's. Obviously whatever happens in the  
19 order on the motion to -- for leave to amend is what's  
20 happening in the order.

21 This piece of paper is not going to override what  
22 happens. That seems to be the concern of Mr. Dahill that  
23 what's going to end up happening is, if in fact Your Honor's  
24 order preserves some rights, but maybe not all, or -- or  
25 however it comes to pass, that perhaps if there is grounds,

1 or we're not barred from a subsequent motion to dismiss on  
2 some ground, that you would then need a subsequent order to  
3 undo what was done here, and we'd be able to make a motion  
4 to dismiss on -- all over again, on the same exact grounds  
5 that perhaps Your Honor's already barred in your order on  
6 the motion to amend. That's not our position. I don't  
7 think that's their position.

8 I just think the way it's presented, I just don't  
9 understand frankly why even the language, but excluding  
10 Dispatch, even needs to be in there because frankly whatever  
11 Your Honor rules on that motion to amend is obviously what  
12 is going to be the lay of the land. We're not -- we're not  
13 looking for anything more or anything less, we're just  
14 seeking to have our rights preserved, as well, and then --  
15 to the extent they're adjudicated later, we'll address them  
16 later.

17 But, as of right now and today and we frankly  
18 apologize for Your Honor -- taking up Your Honor's time on,  
19 you know, what we think should be a very small issue,  
20 unfortunately we couldn't work it out amongst ourselves last  
21 night, but I think it's really just those three words.

22 THE COURT: So -- so this is just about language?  
23 What if the words, but excluding Dispatch, were taken out  
24 and there were a separate paragraph put in that said nothing  
25 in this order applies to Dispatch, isn't that true?

1 MR. KAUFMAN: As long -- as long as there's a  
2 preservation of rights, sure. But excluding, there's the  
3 language in there already that talks about how the motion is  
4 only going to be -- granting the motion for leave to amend  
5 is only going to be granted -- is not going to be granted  
6 with respect to Dispatch. So I think -- I agree with what  
7 Your Honor's saying, I believe, which is if you take out the  
8 language, but excluding Dispatch, we're fine with it.

9 THE COURT: I didn't say just that.

10 MR. KAUFMAN: Oh, well, my apologies.

11 THE COURT: I said and also adding words to the  
12 effect, I'm not drafting your order for you --

13 MR. KAUFMAN: Understood.

14 THE COURT: -- but I could because that's what I  
15 do as a judge. It would be to add something to the effect  
16 that nothing in this order applies to Dispatch because the  
17 issues relating to Dispatch are to be heard on August 15.

18 MR. KAUFMAN: I think that there's maybe language  
19 to that effect already in there, and I agree, Your Honor.

20 In fact, in thinking about it further after our  
21 conversations, have there just been two orders, frankly,  
22 this probably wouldn't have made a difference, that occurred  
23 to me this morning. You know, have their one Dispatch  
24 order, just frankly an adjournment, and one order preserving  
25 rights for the other objectors, I think that would have

1 probably done the trick, as well. But I -- I agree  
2 conceptually with what Your Honor's saying.

3 THE COURT: Well, here's what I'm going to propose  
4 you do. Take five, ten minutes and work out the language  
5 that will be acceptable to both parties. And if you can't  
6 work it out, we're really going to have a hard time on  
7 August 15th.

8 MR. KAUFMAN: Understood, Your Honor.

9 MR. DAHILL: Thank you, Your Honor.

10 MR. KAUFMAN: Thank you.

11 THE COURT: Is there anything more?

12 MS. MARCUS: That concludes the agenda, Your  
13 Honor. All the other matters have been adjourned.

14 THE COURT: Fine.

15 MS. MARCUS: Thank you.

16 THE COURT: Then we are adjourned for the day.  
17 Thank you.

18 (Whereupon these proceedings were concluded at 10:59  
19 AM)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is  
a true and accurate record of the proceedings.

Jamie  
Gallagher

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